

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of Rebecca Spears	FINDINGS OF FACT, CONCLUSIONS AND ORDER
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This matter came before Administrative Law Judge Manuel J. Cervantes (“ALJ”) on May 26, 2009, for a contested case hearing held by telephone pursuant to a Notice for Hearing issued on April 22, 2009. At the hearing of May 26, 2009, Ms. Spears (“Respondent”) requested copies of the Department of Corrections (“Department”) Supervision Fees Policies. The ALJ granted a continuance for this purpose. The hearing reconvened on June 4, 2009. The record closed on June 4, 2009, at the conclusion of the telephonic hearing.

Krista Guinn Fink, Associate Legal Counsel, appeared telephonically on behalf of the Department.

Rebecca Spears appeared telephonically, without counsel.

STATEMENT OF ISSUE

Is the Department authorized to collect a supervision fee of \$120.00 from Respondent pursuant to Minn. Stat. § 241.272 through the Minnesota Revenue Recapture System?

Based on the evidence in the record, the ALJ makes the following:

FINDINGS OF FACT

1. Respondent was ordered to serve a sentence of probation for the offense of Driving While Intoxicated, First Degree, a felony, on March 8, 2004.¹ Respondent’s sentence will be discharged in March 2016.²

2. The Department imposes an annual supervision fee upon all offenders under the supervision of a correctional agent.³ The supervision fee is assessed on the anniversary of the sentencing date of each year.⁴ A supervision fee in the amount of

¹ Affidavit of Willie Swanson, Department of Corrections Agent, dated May 14, 2009.

² Testimony of Respondent.

³ *Id.*

⁴ Minn. Stat. § 241.272 and DOC Policy 201.013 (effective 11/7/06).

\$120.00 was imposed on March 8, 2004, and every March 8 thereafter through 2008. Respondent claims she has paid supervision fees in excess of \$300.00. The only contested issue before the ALJ is the fee imposed on March 8, 2008.⁵

3. At the hearing, Respondent argued in favor of the application of DOC Policy 201.013 (effective 7/1/08) which policy limits supervision fees to a per court file maximum fee of \$300.00 for a felony case. DOC Policy 201.013 (effective 11/7/06) authorizes a \$120.00 annual supervision fee without a maximum fee cap.

4. On March 11, 2009, the Department notified Respondent of its intent to collect the supervision fee through the Minnesota Revenue Recapture Program and of her right to request a hearing.⁶ By letter received March 24, 2009, Respondent requested a contested case hearing.⁷

5. On April 22, 2009, the Department issued a Notice of and Order for Hearing.

Based on the Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08, and 270A.09. Pursuant to Minn. Stat. § 270A.09, subd. 3, the decision in this hearing is the final decision in this administratively contested case. The judicial review provisions contained in Minn. Stat. §§ 14.63 to 14.68 apply to this decision.

2. Notice of this hearing was proper and the Department has fulfilled all procedural requirements.

3. The \$120.00 fee is a “correctional fee” within the meaning of Minn. Stat. § 241.272. Under Minn. Stat. § 241.272, subd. 3(a), the Department may impose and collect fees from individuals on supervised release at any time while the offender is under sentence or after the sentence has been discharged. Under subdivision 3(b) of that statute, the Department may use any available civil means of debt collection to collect a correctional fee.

4. The DOC Policy 201.013 (effective 11/7/06) was the applicable policy on March 8, 2008, Respondent’s anniversary date. The Department properly imposed a \$120 supervision fee upon Respondent on March 8, 2008.⁸ Respondent is not entitled to the application of DOC Policy 201.013 (effective 7/1/08) until after the effective date of the policy or until Respondent’s subsequent anniversary of March 8, 2009.

⁵ Letter of Willie Swanson, dated March 11, 2009 and Notice of Hearing.

⁶ *Id.*

⁷ Letter of Rebecca Spears, dated March 19, 2009.

⁸ DOC Policy 201.013 (effective 11/7/06), A.5.

5. Respondent owes the Department of Corrections an annual supervision fee of \$120.00 for the period from March 8, 2008 through March 7, 2009.

6. The Minnesota Revenue Recapture Act authorizes State agencies, including the Department of Corrections, to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the Department of Corrections by setting off the amount of such debt from refunds due to debtors. Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.

7. It is appropriate for the Department of Revenue to collect the supervision fee of \$120.00 from Respondent through the revenue recapture provisions of Minn. Stat. ch. 270A.

Based on the Conclusions, the ALJ makes the following:

ORDER

IT IS ORDERED that the Department of Corrections may proceed with its request to collect the March 8, 2008 supervision fee of \$120.00 from Respondent through the Minnesota Revenue Recapture Program.

Dated: June 10, 2009

s/Manuel J. Cervantes

MANUEL J. CERVANTES

Administrative Law Judge

MEMORANDUM

Effective 7/1/08, DOC Policy 201.013 was revised to place a \$300.00 per court file cap on the amount an offender would pay in supervision fees. Before this change, DOC Policy 201.013 (effective 11/7/06) imposed an annual supervision fee of \$120.00 without any maximum. Apparently, Respondent had already paid in excess of \$300.00 before the March 8, 2008 fee became due and payable. Respondent argued for the application of the \$300.00 cap in her case. Because her anniversary date, March 8, 2008, fell before the effective date of the new policy, she is not entitled to the \$300.00 cap until her anniversary date in 2009.

M. J. C.